Supreme Court, U.S.
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No. 99-220

In The
Supreme Court of the United States

DCR Inc. and KATHY T. JOHNSON,

Petitioners,

v.

PIERCE COUNTY,

Respondent.

On Petition For A Writ Of Certiorari To The
Washington Court of Appeals, Division II

RESPONDENT'S BRIEF IN OPPOSITION

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I.

JURISDICTION

The Washington State Court of Appeals, Division II, issued its decision on October 2, 1998. Thereafter, petitioner timely filed a petition for review with the Washington State Supreme Court which was denied on May 5, 1999.

Petitioner amended the original complaint to include claims under the Civil Rights Act, Title 42 United States Code Section 1983, for violation of the First and Fourteenth Amendments. Although plead through the amended complaint this court does not have jurisdiction as Petitioner argued at the state court level that Article 1, Section 5 of the Washington State Constitution afforded *greater* protection to Erotic Dancing than the First Amendment of the United States Constitution. App. 1. Thereby abandoning the federal claims. Petitioner was relying on a recent decision of the Washington State Supreme Court, Ino Ino , Inc. v. City of Bellevue, 132 Wn.2d 133, 937 P.2d 154, (1997), cert. denied, ___ U.S. ___, 118 S.Ct. 856, 139 L.Ed.2d (1998). Their argument was that requiring all dancing to occur on a stage 18 inches high and no closer than 10 feet to any patron (thereby eliminating table, lap and couch dancing) violated Article 1, Section 5 of the Washington State Constitution. That argument failed and now Petitioner attempts to resurrect the federal claims.

Petitioner has not met the requirement of Supreme Court Rule 14 (1) (g) (i). This court should not permit Petitioner to forum shop hoping for relief. This court should deny the Writ of Certiorari based on lack of jurisdiction.

II.

STATEMENT OF THE CASE

On March 15, 1994, the Pierce County Council adopted Ordinance No. 94-5.[1] CP 151. The ordinance was drafted by the Pierce County Prosecuting Attorney's Office at the request of law enforcement agencies, local citizens and members of the county council. The new law deals with "erotic dance studios" and involves what has routinely been called "topless clubs" in Pierce County.

Pierce County has a notorious history when it comes to topless clubs. In recent memory, Pierce County's Sheriff was involved in corruption and organized crime activities and ended up in federal prison after being convicted of racketeering and conspiracy charges involving topless establishments. Individuals used arson and intimidation to discourage competition in this lucrative field, and even tried to murder a liquor control agent. Eventually, the scandal helped change the form of government in Pierce County.

Violations of the adult entertainment code included illicit touching between dancers and patrons, dancers exposing their breasts and vaginal areas while hovering over patrons, rubbing patrons' crotches, simulating sex while sitting on patrons' laps and almost anything imaginable.

Violations were so common and outrageous that members of the Pierce County Sheriff's Department recorded these "couch & table dances" on videotape. Exhibit E to Pierce

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[1] CP refers to Clerks' Papers, the record in the Washington State Court of Appeals, Division II.

County's Memorandum in Support of Motion for Summary Judgment is a brief sampling of dancer conduct captured on film at appellant's establishment (Fox's), & Deja Vu (dismissed out of the original suit on motion of Pierce County). CP 151, Exhibit E. The tape runs an abbreviated 8.5 minutes and was recorded in March of 1993. The first segment shows an individual at Deja Vu receiving a "couch dance" and giving money to the dancer. The second segment shows an individual at Fox's receiving a "table dance."

In vain, prosecutors tried to enforce the former ordinance, but local courts ruled there was no criminal penalty provision, and the only remedy was to try and suspend a dancer's license through the hearing examiner process. This proved futile as the former ordinance (which allowed off-stage dancing, and the direct exchange of money between dancer and patron) was inadequate, making enforcement efforts impossible.

At the public hearing conducted by the Pierce County Council when considering Ordinance No. 94-5, Pierce County Sheriff's Deputy Martin Kapsh testified that:

> ...and on several occasions, in three of the clubs again, I was propositioned for acts of prostitution, where I was told to go outside the club, the dancer would have to pay a bar fine to the particular club, to the manager, and in essence that was the money that the dancer would have made dancing while the dancer was in the club. The management would allow the dancer to leave with the customer, go to a motel room or

> to a house, be gone for an hour
> or two, and then come back.

CP 151, Exhibit B, page 31, lns. 19-26.

Deputy Paul Thrash testified that in a club that still operates in Pierce County numerous drug and sex violations were documented:

> During that point, that period of time, I was able to workup a case where we had over four or five different dancers where we were able to purchase just about any type of drug you would want. The predominant cases that we had were marijuana, methamphetamines, cocaine, and I believe on one instance we had a purchase for acid. Of those dancers that we had the purchases from, at the culmination of the investigation we were able to charge up to eighteen dancers with a myriad of violations of laws, not only the narcotics violations, but alcohol violations inside the club, which were prohibited at that time, prostitution, not only prostitution dances, I might add, but prostitution offers and agreements that were taking place outside of the club.

CP 151, Exhibit B, pg. 28, lns. 7-26.

Petitioner (DCR, Inc. and Kathy T. Johnson, subsequently referred to as DCR) claims that Pierce County's efforts to enforce the original Pierce County Adult Entertainment Ordinance ceased after the District Court held that there was no criminal penalty section. This is inaccurate as the County continued to try and enforce the existing ordinance by suspending dancers licenses through civil hearings, but this proved fruitless, as noncompliance was the rule not the exception.

After years of police work, failed enforcement efforts, and obvious noncompliance by the topless clubs, the Pierce County Prosecuting Attorney's Office, supported by local law enforcement and community members drafted Ordinance No. 94-5.

The crux of the ordinance attempts to separate dancer and patron by requiring all nude dancing to occur on a platform eighteen inches high and ten feet away from patrons. PCC 5.14.190(h). On stage dancers may still express themselves by dancing totally nude. Gratuities are still allowed, but tipping must be indirect (placed in a jar, etc.). PCC 5.14.190(k) (l).

In April, 1994, DCR and Johnson filed suit challenging the constitutionality of the ordinance in Pierce County Superior Court. CP 3. The matter was assigned to the Honorable Thomas Sauriol. CP 108-111. Following discovery, Pierce County moved for summary judgment on May 3, 1996. CP 151-193. DCR and Johnson also moved for summary judgment. After a full hearing, the trial court granted Pierce County's Motion for Summary Judgment and ordered that the preliminary injunction be dissolved. CP 788-791. On May 24, 1996, the trial court signed an amended order granting Pierce County's Motion for Summary Judgment.

In support of its motion for summary judgment Pierce

County submitted:

1. The transcript from the Pierce County Council hearing that was conducted before Ordinance 94-5 was adopted. Numerous law enforcement officers, citizens and elected officials testified in support of adoption of the ordinance. CP 151, Exhibit B.

2. A video tape taken at appellant's place of business, Foxes, (and at Deja Vu, a plaintiff that was dismissed out of the suit on motion of Pierce County) showing patrons receiving a "table" and "couch" dance. CP 151, Exhibit E.

3. Pierce County Sheriff's Department statistics from 1992 indicating that in 52 inspections conducted at adult entertainment establishments 40 arrests were made for violations of the law. Similar statistics from 1993 indicating that in 118 inspections conducted 76 arrests were made. CP 669, Exhibit A1-A4.

4. Twenty-three separate incident reports generated by Pierce County Sheriff's Department personnel documenting violations of the existing adult entertainment ordinance. CP 669, Exhibit B.

5. Statistics showing the number of calls made to the Pierce County Sheriff's Department for adult nightclubs in Pierce County. CP 669, Exhibit A5.

6. A Declaration of Pierce County Sheriff's Lieutenant Larry Gibbs indicating, among other things, that allowing table and couch dancing will result in continued violations of the law and illegal sexual contact between dancer and patron. CP 669, Exhibit C.

7. A citizen petition filed in support of Pierce

County Ordinance No. 94-5. CP 669, Exhibit D.

On May 15, 1996, DCR filed a Motion to Consolidate their appeal with Ino Ino, Inc. v. City of Bellevue. On May 15, 1996, the Washington State Supreme Court entered an order denying DCR's Motion to Consolidate.

On May 30, 1996, DCR filed a Motion for Stay of Enforcement and requested an emergency hearing and oral argument. On May 31, 1996, the Washington State Supreme Court entered an order denying a stay of enforcement and an emergency hearing. The Court considered the motion for a stay on July 9, 1996, without oral argument and ordered that the County shall not enforce Section 2 (h) of Ordinance 94-5. (All dancing shall occur on a platform intended for that purpose which is raised at least eighteen inches from the level of the floor and no closer than ten feet from any patron). The Court also ordered that in all other respects enforcement of the ordinance is not stayed.

DCR then filed an appeal in the Court of Appeals of the State of Washington, Division II, and on October 2, 1998, the Court of Appeals upheld the trial court and the constitutionality of PCC 5.14 in a published opinion, DCR, Inc. v. Pierce County, 92 Wn. App. 660, 964 P.2d 380 (1998). Petition for review was denied by the Washington State Supreme Court on May 5, 1999.

III.

REASONS FOR DENYING THE WRIT

1. The Issue of First Amendment Application to Erotic Dancing Has Been Repeatedly Decided.

There is no confusion as DCR claims over decisions involving adult entertainment ordinances that regulate distance

and other aspects of nude dancing. In Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991), this court upheld an Indiana public indecency law that resulted in nude dancers having to wear pasties and G-strings. The court decided that these requirements did not violate the First Amendment's guarantee of freedom of expression. In the case at hand, dancers are still allowed to perform totally nude and also allowed to receive tips from patrons (indirectly). Petitioners challenge the stage requirement (all dancing must occur on a stage 18 inches high and no closer than 10 feet to the nearest patron). This argument is not supported by the decision in Barnes.

A similar ordinance (but no tipping is permitted whatsoever) was upheld by the 9th Circuit Court of Appeals in Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986). Recently, the City of Bellevue's adult entertainment ordinance was upheld by the Washington State Supreme Court in Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d. 133, 937 P.2d 154 (1998), cert. denied, ___ U.S. ___, 118 S.Ct 856, 139 L. Ed.2d (1998). The court found that Bellevue's eighteen-inch stage height requirement and four-foot separation between dancer and patron for off-stage performances was constitutional.

In the case at hand, the Court of Appeals stated that "Contrary to DCR's position, the Washington Supreme Court recently held that 'the differences in texts of art. I § 5, [of the state Constitution] and the First Amendment' do not 'justify] greater state constitutional protection in the context of sexually explicit nude and semi-nude dancing.' Ino Ino, 132 Wn.2d at 119-20. Courts have acknowledged that "[n]ude dance . . . is afforded lesser protections than other types of speech, such as political speech." See DFW Vending, Inc. v. Jefferson County, 991 F.Supp. 578, 590 (E.D. Tex. 1998) (citations omitted). Rather nude dancing is expression that "clings to the edge of constitutional protection.'" Ino Ino, 132 Wn.2d at 116 (quoting

JJR, Inc. v. City of Seattle, 126 Wn.2d 1, 9, 891 P.2d 680 (1992)). Although arguably "expressive," illegal conduct associated with table dancing, such as customers' digital penetration, oral copulation, insertion of tips into dancers' orifices, falls outside this edge of constitutional protection.

On November 1, 1996 the City of Kent's adult entertainment ordinance (similar to Pierce County's) was upheld by Federal District Judge Thomas S. Zilly. The court deemed the ordinance constitutional, rebuffing challenges brought by "topless clubs" based upon the First Amendment. Like Pierce County, Kent required a ten-foot separation between dancer and patron and a twenty-four inch stage height requirement (Pierce County's stage height requirement is eighteen inches). Colacurcio v. City of Kent, 944 F. Supp. 1470 (1996).

The Ninth Circuit Court of Appeals upheld Judge Zilly's decision on December 8, 1998, in Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998). The court stated that "table dancing" is not a unique form of expression entitled to separate analysis under the First Amendment. The court stated, "We conclude that table dancing in private nightclubs, with documented links to prostitution and drug dealing, is a highly unlikely candidate for special protection under the First Amendment." Id. at 556.

2. Table Dancing, Lap Dancing, And Couch Dancing Are Not Unique Forms Of Expression Entitled To Special Protection Under The First Amendment.

Uniqueness alone is insufficient to trigger separate First Amendment protection. Colacurcio, 163 F.3d at 555. The Ninth Circuit held in Colacurcio that table dancing is not a unique form of protected expression that is qualitatively different from nude stage dancing and thus entitled to separate First Amendment analysis. Colacurcio, 163 F.3d at 554-56.

In assessing a First Amendment challenge, the court looked both to the private claims asserted in the complaint and the governmental interests protected by the enactment. "'A valid basis for according differential treatment to even a content-defined subclass of prescribable speech is that the subclass happens to be associated with...secondary effects' of the speech, so that the regulation is 'justified without reference to the content of the...speech.'" Colacurcio, 163 F.3d at 555-6, quoting R.A.V. v. City of St. Paul, 505 U.S. 377, 389, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). The court found that table dancing in private clubs is not entitled to special protection under the First Amendment due to its documented links to the secondary effects of prostitution and drug dealing. Id. at 556. Seealso Acorn v. City of Phoenix, 798 F.2d 1260 (9th Cir. 1986) (upheld ordinance prohibiting the practice of distributing flyers and soliciting funds from automobile passengers stopped at red lights on justification of traffic control and public safety purposes); Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 117 S.Ct. 855, 866, 137 L.Ed.2d 1 (1997) (holding that public safety interests justified fifteen-foot "fixed buffer zone" separating abortion protestors from abortion clinics).

In the present case, the County has a substantial interest in preventing the secondary effects that often occur as a result of table dancing. The County presented evidence that investigations of law enforcement authorities revealed erotic dance studio problems with prostitution, narcotics, and sexual contact. The prohibitions in Acorn and Schenck were upheld even though they were analyzed under the rigorous standards applied to speech regulation in traditional public forums. The Ninth Circuit rejected appellants' attempt to apply a public forum analysis to table dancing, stating:

> Appellants' fluid definition of relevant forums, if carried to its logical conclusion, would

> require courts to subdivide audiences to the extent that any speech restrictive regulation would necessarily fail. . . . Appellant's theory would lead to the ironic result that forms of expressive conduct with documented connections to criminal activity would enjoy special constitutional protection. The district court was correct in rejecting this proposition. If forum analysis is relevant here, the appropriate forum is the entire cabaret. Even assuming that the audiences for table dancing and stage dancing are distinguishable, there is undoubtedly a high degree of overlap. The ten-foot distance requirement does not rob dancers of their forum or their entire audience.

Colacurcio, 163 F.3d at 556. Under the Ninth Circuit's reasoning, table dancing cannot be distinguished from stage dancing as a forum and cannot be designated unique for purposes of First Amendment analysis.

3. DCR Has Not Been Denied Access To The Nude Dancing Market.

The government has to effectively deny the business a "reasonable opportunity to open and operate" within the area in order for the courts to hold an ordinance unconstitutional. Colacurcio, 163 F.3d at 557, citing City of Renton v. Playtime

Theatres, Inc., 475 U.S. 41, 54, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). "In the absence of any absolute bar to the market...it is irrelevant whether [a regulation] will result in lost profits, higher overhead costs, or even prove to be commercially unfeasible for an adult business." Topanga Press, Inc. v. City of Los Angeles, 989 F.2d 1524, 1531 (9th Cir. 1993). The scope of permissible economic analysis is whether one is permitted to enter or participate in the market in the first instance, not whether a particular business will be able to successfully compete within the market. Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663, 666 (9th Cir. 1996). "Even if the costs of compliance were so great that [appellants] would be forced out of business, the ordinance[ ] do[es] not pose any intrinsic limitation on the operation of the [business]." Id. at 667.

In Colacurcio, the operators contended that their club in Bellevue, which was subjected a four-foot setback requirement, lost profits because the average number of dancers decreased, dancers quit, and fewer patrons purchased table dances. However, the court held that this was insufficient evidence to show that the ten-foot distance requirement would serve as an absolute bar to market entry in Kent. The court stated:

> Appellants have merely shown a potential loss in profits, which arguably could be remedied by restructuring the way they do business. The fact that Appellants hire their dancers on an independent contractor basis, refuse to pay their dancers for dancing on stage, require their dancers to pay rental fees, and limit their dancers' remuneration to tips from patrons, appears to us to be an effort to maximize

> profits while minimizing
> dancers' economic security.

Colacurcio, 163 F.3d at 557-8.

Similarly, DCR produced evidence that the industry practice is for dancers to pay the studio and a dancer's sole compensation is direct tips. The tipping restriction in the Ordinance does not prohibit all tipping; it merely prevents the patron from directly tipping the dancer in an effort to minimize the illegal secondary conduct such as prostitution and narcotics transactions, which often occur. Dancers can still receive tips indirectly through means such as a tip jar. In addition, DCR could restructure its business scheme so that profits could be earned despite the restrictions of the ordinance, a fact on which the Colacurcio seemed to rely. Moreover, courts have held that lost profits are irrelevant in the absence of any absolute bar to the market.

4. Pierce County Code Sections 5.14.070 And 5.14.240 Do Not Constitute Prior Restraints.

Pierce County Code 5.14.070 states that:

> The auditor shall issue an erotic dance studio license within 30 days of receipt of both the properly completed application and application fee, and upon finding that the business complies with all applicable fire, building, and zoning codes.

As noted in the decision by the Court of Appeals, ". . . we must construe an ordinance to uphold its constitutionality, if possible". State ex rel. Herron v. Browet, 103 Wn.2d, 215, 219,

691 P.2d 571 (1984). PCC 5.14.070 *requires* the Auditor to issue a license within 30 days of a properly completed application. If there are violations of safety or zoning codes the license would issue within 30 days after such violations were corrected.

DCR's argument taken to its illogical conclusion would require the Auditor to issue a license within 30 days even if there were uncorrected violations of the above referenced codes. This is not supported by Worldwide Video v. City of Tukwila, 117 Wn.2d 382, 816 P.2d 18 (1991).

Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097 (9th Cir. 1998), holds that a licensing scheme . . . must provide an avenue for prompt judicial review . . . and a prompt decision by a judicial officer. DCR's reliance upon Baby Tam & Co., is misplaced as PCC 5.14.270 affords a prompt review (90 days) and PCC 1.22.120 requires a decision within 10 days. App. 2.

DCR contends that PCC 5.14.070 is a prior restraint because the Pierce County Ordinance provides an aggrieved applicant for a license an administrative hearing within 90 days, after an adverse decision by the auditor, rather than 20 days. DCR relies upon Worldwide Video v. City of Tukwila. In that case, the Washington State Supreme Court upheld the peep show licensing ordinance adopted by the City of Tukwila. The City Clerk is required under the Tukwila ordinance to issue the licenses, or the reasons for non-issuance, within 30 days after the date of filing of an application. The 30-day period is intended to provide time for various necessary investigations by the police department, health department, etc. PCC 5.14.070 also has a 30-day time limitation and includes a finding that the business complies with all applicable fire, building, and zoning codes. In Worldwide Video, the court stated that the 30-day maximum approval period in TMC 5.52.080(a) is constitutional. The court stated that 30 days is not necessarily too long a period, given the

various inspections and investigations which must take place before licensing. It distinguished FW/PBS v. City of Dallas, 493 U.S. 215, 110 S.Ct. 596, 197 L.Ed.2d 603 (1990) where the United States Supreme Court invalidated a licensing requirement passed by the City of Dallas because it provided no means by which an applicant might ensure that the business be inspected within the 30-day time period. Its disapproval of the Dallas ordinance was instead based on the absence of any remedy if the city failed to issue a license within those 30 days. The court in Worldwide Video, noted that the Supreme Court did not find the 30-day period inherently problematic. The problem was that there was not an appropriate remedy if the city failed to issue a license within the 30 days. This is not the case with Pierce County Ordinance No. 94-5.

PCC 5.14.070 must be read with PCC 5.14.240 which reads in its entirety:

5.14.240 Appeal and Hearing.

A. Any applicant/licensee that has had a license denied, revoked or suspended by the Auditor shall have the right to appeal such action to the Pierce County Hearing Examiner, by filing a notice of appeal with the Auditor within ten working days after receiving notice of the action. The matter shall be heard within ninety days by the Hearing

Examiner, unless the parties agree otherwise.

B. The filing of an appeal by an applicant/licensee shall stay the action of the Auditor, pending a resolution of the matter.

C. The decision of the Hearing Examiner shall be based upon a preponderance of the evidence.

D. The burden of proof shall be on the Auditor.

E. The decision of the Hearing Examiner shall be final unless appealed to Superior Court within ten working days from the date the decision is entered by filing an appropriate action and serving all necessary parties.

PCC 5.14.240(a) provides that an applicant that has had a license denied, revoked or suspended by the auditor has the right to appeal such a decision to the Pierce County Hearing Examiner and the matter must be heard within 90 days unless the parties agree otherwise. Further, section (e) states that the decision of the hearing examiner shall be final unless appealed to the Superior Court within 10 working days from the date the decision is entered by filing an appropriate action and serving all parties necessary. Section (b) indicates that the filing of an appeal by an applicant or licensee shall stay the action of the auditor *pending a resolution of the matter*. As pointed at by the

Court of Appeals, PCC 5.14.240 provides for a stay until the appeal process is exhausted.

In Worldwide Video, the court upheld Tukwila's code because a hearing had to take place within 20 days, the filing of such appeal stayed the action of the clerk, and the decision of the hearing body may be appealed to the superior court. The court continued "as long as these procedures for appeal are not used as a means of unreasonably delaying issuance of licenses, they are sufficient to satisfy the test in FW/PBS v. City of Dallas.

In the case at hand, DCR's only argument is that rather than a 20-day appeal period, Pierce County has provided for a 90-day appeal period, with all other code provisions being identical to the one upheld in Worldwide Video. This argument is weak at best. Ninety days in a judicial context or setting is not extensive, and was included to accommodate the realization that an adequate amount of time to process appeals is necessary. It is important to note that any action taken is stayed pending the outcome on appeal.

DCR contends that PCC 5.14.070 and 5.14.240 are prior restraints because there is no time limit for the completion of administrative review conducted by the hearing examiner. PCC 1.22.120 states that all decisions of the hearing examiner shall be rendered within 10 working days following the conclusion of all testimony and hearings and closing of the record unless a longer period is mutually agreed to by the applicant or appellant and the examiner.

IV.

CONCLUSION

DCR has not cited one case that would invalidate Pierce County Ordinance 94-5, to the contrary the existing case law up-

holds a municipalities' authority to separate dancer from patron.

This court in Barnes allowed an Indiana public decency law that required panties and G-strings in nude dancing establishments to stand. The Ninth Circuit Court of Appeals relying on Barnes upheld an almost identical statute to 94-5 in Colacurcio.

DCR's petition should be denied.

DATED this 28 day of September, 1999.

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No. 21446-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DCR, Inc., a Washington corporation;
and KATHY T. JOHNSON,

Appellants,

v.

PIERCE COUNTY,

Respondent.

APPEAL FROM PIERCE COUNTY SUPERIOR COURT

PETITION FOR REVIEW

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Appendix "1"

I.

IDENTIFY OF PETITIONERS

The Petitioners are the DCR, Inc. and Kathy T. Johnson, the appellants in the Court of Appeals.

II.

COURT OF APPEALS DECISION

Petitioners are seeking review of the decision of the Court of Appeals, Division II, in DCR, Inc. and Kathy T. Johnson v. Pierce County, ___ Wn.App. ___, 964 P.2d 380 (1998), that was filed on October 2, 1998. The Petitioners timely filed a motion for reconsideration. The order denying the motion for reconsideration was entered on November 24, 1998.

III.

ISSUES PRESENTED FOR REVIEW

A. The first issue is whether the Court of Appeals decision holding that Pierce County's absolute ban on table dancing is not a prior restraint conflicts with this Court's decision

in Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103, 937 P.2d 154 (1997).

B. The second issue is whether the Court of Appeals neglected to follow established First Amendment case law in holding that the Pierce County Ordinance is narrowly tailored in furtherance of a substantial governmental interest.

C. The third issue is whether the Court of Appeals failed to follow this Court's decision in Ino Ino, Inc. v. City of Bellevue, supra, in deciding that economic impact evidence is irrelevant to the determination of whether Pierce County's Adult Entertainment Ordinance leaves open ample alternative avenues of communication.

D. The fourth issue is whether PCC §§ 5.14.070 and 5.14.240 are an impermissible prior restraint because there are no time limits for issuance of a license, no provision for a prompt administrative hearing, and no provision for a prompt judicial decision.

Appendix "1"

Chapter 1.22

PIERCE COUNTY HEARING EXAMINER CODE

1.22.120 Examiner's Decision

A. When the Examiner renders a decision he or she shall make and enter findings of fact from the record and conclusions of law thereof which support such decision. The findings of fact shall be supported by substantial evidence in the record and the conclusions of law shall be based upon the policies of the applicable Comprehensive Plan, Shoreline Master Program, Subdivision Regulations, Environmental Regulations; the standards set forth in the various land use regulatory codes of the County or any other relevant plan, regulation, Federal or State law, case law, case specific Shorelines Hearing or Growth Management Hearing Board decisions, or any other applicable law.

B. All decisions of the Examiner shall be rendered within ten working days following the conclusion of all testimony and hearings and closing of the record, unless a longer period is mutually agreed to by the applicant or appellant and the Examiner. Upon issuance of the Examiner's decision, the Examiner shall transmit a copy of the decision by certified mail to the applicant or appellant and by regular mail to other parties of record.

(Ord. 96-19S § 4 (part), 1996; Ord. 94-112S § 1 (part), 1994; Ord. 90-154 § 1 (part), 1990; Res. 20489, 1978)

Appendix "2"